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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. RONNIE HUNTER, Defendant and Appellant.	A148799 (Alameda County Super. Ct. No. C130630)

A jury found Ronnie Hunter to be a sexually violent predator (SVP) under the Sexually Violent Predator Act (SVPA). (Welf. & Inst. Code, §§ 6600 et seq.).[1] He now contends the trial court erred by allowing expert witnesses to testify about case-specific hearsay in violation of *People v. Sanchez* (2016) 63 Cal.4th 665, and by admitting documents without redacting case-specific hearsay. He further alleges he received ineffective assistance of counsel because his counsel did not object to the admission of case-specific hearsay. In addition, defendant claims the court violated his Fifth Amendment right against self-incrimination when it ordered him to submit to evaluation by two psychologists and required him to answer questions on the stand about his consumption of alcohol. Finally, he claims he suffered prejudice because of these cumulative errors. We affirm.

[1] All references to the code are to the Welfare and Institutions Code unless otherwise specified.

I. FACTS

A. Overview

On January 11, 2008, the Alameda County District Attorney's Office filed an amended petition to commit defendant as an SVP. After a series of continuances, a jury trial on the amended petition commenced on March 22, 2016. For the jury to find the petition to be true, the prosecution was required to prove beyond a reasonable doubt that the defendant was an SVP. (§ 6604; *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1147.) An SVP is "a person who has been convicted of a sexually violent offense[2] against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (§ 6600, subd. (a)(1); *People v. Vasquez* (2001) 25 Cal.4th 1225, 1228–1229.)

To prove defendant was an SVP, the prosecutor presented to the jury transcripts of testimony about three SVPA-qualifying convictions, certified court documents for the SVPA-qualifying crimes, exhibits detailing defendant's complete criminal history, a Department of State Hospitals (DSH) case history, as well as testimony and reports from two psychologists who evaluated defendant's record. Defendant stipulated to the admission of all admitted exhibits and took the stand in his defense. Based on the evidence summarized below, the jury found the petition to be true.

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[2] Under the SVPA, a sexually violent offense "means the following acts when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as defined in subdivision (a): a felony violation of Section 261, 262, 264.1, 269, 286, 287, 288, 288.5, or 289 of, or former Section 288a of, the Penal Code, or any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 287, 288, or 289 of, or former Section 288a of the Penal Code." (§ 6600, subd. (b).)

B. Evidence of SVPA-Qualifying Convictions

The prosecutor read into evidence victim testimony from the preliminary hearing transcripts of three SVPA-qualifying convictions.[3]

1. Jean H.

The first preliminary transcript proved that defendant committed his first SVPA-qualifying offense after Jean H. accepted a ride from him in Berkeley in 1973. Defendant drove Jean H. around briefly before he stopped his car, hit her several times, and ordered her to keep down on the seat. Defendant began driving again, while using his arm to push Jean H.'s head onto his lap. He unzipped his pants and threatened to knife Jean H. if she refused to cooperate.

Ten minutes later, defendant stopped the car and forced Jean H. to orally copulate him. Afterward, he demanded Jean H. take off her pants. Jean H. struggled to remove her pants because she was wearing hiking boots, so defendant ordered her out of the car and drove away. Defendant was convicted of forced oral copulation of Jean H.

2. Geri B.

The second preliminary hearing transcript showed that defendant committed his second SVPA-qualifying offense when he gave Geri B. a ride in Oakland in 1982. After Geri B. entered defendant's car, he drove to a motel purportedly to pick up something from his cousin. When they arrived, defendant forced Geri B. into a motel room and pushed her onto a bed. Geri B. told defendant that she was menstruating and had a yeast infection. Undeterred, defendant ordered her to remove her pants and penetrated her, then forced her to orally copulate him. He also tried but failed to sodomize her. Defendant was convicted of raping Geri B.

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[3] The SVPA contains a special hearsay exception allowing the underlying facts of SVPA-qualifying crimes to be proven through documentary evidence, including preliminary transcripts, probation reports, and conviction documents. (§ 6600, subd. (a)(3).) Defendant does not contest that these transcripts were properly admitted by being read into the record.

3. Cynthia M.

The third preliminary hearing transcript established that defendant committed his final SVPA-qualifying crime when he invited Cynthia M., a woman with whom he had previously had consensual sex, over to his apartment in 1986. When Cynthia M. arrived, she saw cocaine and noticed defendant was acting high. She told defendant, "I think I better leave." Defendant pulled out a gun and informed Cynthia M. that she wasn't going anywhere.

Over the next seven and a half hours, defendant repeatedly sexually assaulted Cynthia M. at gunpoint. Defendant ordered Cynthia M. to orally copulate him, telling her he was going to make her do it until she did it right. He eventually ejaculated, told her to light his cocaine pipe, ordered her to take two hits so she could "do it" the way he wanted, and then forced her to orally copulate him again while he smoked cocaine. Meanwhile, he continued to hold the gun. Eventually, he set up a camera and filmed Cynthia M. orally copulating him as he held a gun to her head. After a while, he forced her to have sexual intercourse. He then forced Cynthia M. to orally copulate him again while they watched the video he had just recorded. When the video finished, he smoked cocaine again and sodomized her. Eventually, he went to the bathroom. After he finished using the bathroom, he ordered her to light a cocaine pipe, so he could continue holding the gun. He forced her to orally copulate him again. When he finally allowed Cynthia M. to leave, he threatened to kill her if she went to the police. Defendant was convicted of forcibly raping Cynthia M., forcibly sodomizing Cynthia M., forcing Cynthia M. to orally copulate him, falsely imprisoning Cynthia M., and being a felon in possession of a firearm.

C. Expert Evidence

The prosecutor presented the testimony and reports of two psychologists, Dr. Laljit Sidhu and Dr. Roger Karlsson, who diagnosed defendant with mental disorders predisposing him to commit criminal sexual acts and making it likely that he would reoffend.

1. Dr. Sidhu's Testimony

Dr. Sidhu testified first and based his opinion on defendant's lengthy criminal history, hospital disciplinary records, and prior evaluations.

a. Criminal History

To support his opinion, Dr. Sidhu discussed defendant's criminal history, including several non-SVPA-qualifying convictions with a sexual component. Sidhu explained that defendant committed his first crime at the age of 12 and his first crime with sexual component at 14. In fact, when defendant was 14, he was prosecuted twice for crimes with a sexual component: once for grabbing a woman's crotch and breasts while robbing her and another time for threatening a former girlfriend with a starter pistol and telling her, "let's fuck."

Dr. Sidhu then turned to defendant's adult offenses. In 1975, defendant committed his first SVPA-qualifying offense against Jean H. The next year, defendant was convicted of battery for picking up a hitchhiker and attempting to force her to orally copulate him before she managed to escape. A year later, defendant was convicted of assault with intent to commit oral copulation after he picked up another hitchhiker and attempted to force her to orally copulate him. That same year, defendant attacked another former girlfriend, forcing her to go to the bank and give him money while he was out on bail.

Dr. Sidhu explained that, in 1982, defendant was charged with but not convicted of raping another victim, Brenda R. Dr. Sidhu described how defendant drove up to Brenda R. and pretended to have a weapon to coerce her into his vehicle. Eventually, he forced her to orally copulate him before sodomizing and robbing her. This sexual assault took place ten days before defendant committed his second SVPA-qualifying offense against Geri B. After serving time for raping Geri B., he was released and soon after committed the third SVPA-qualifying offense against Cynthia M.

In total, Dr. Sidhu opined that defendant had sexually assaulted eight to nine victims even though he had only three SVPA-qualifying convictions. Dr. Sidhu testified

that defendant characterized some of his victims as prostitutes and denied that he committed these offenses when interviewed by other evaluators.

b. Substance Abuse

Dr. Sidhu testified that defendant began using alcohol when he was 12 years old. He noted that defendant was under the influence of alcohol when committing some of his crimes and that he had also sustained a driving under the influence conviction. Dr. Sidhu further noted that hospital records showed defendant had been disciplined for manufacturing and distributing alcohol called "pruno" while hospitalized.[4]

c. Diagnosis

Dr. Sidhu diagnosed defendant with other specified paraphiliac disorder (nonconsenting), antisocial personality disorder, and alcohol use disorder. He explained his specified paraphiliac disorder (nonconsenting) diagnosis was based on defendant's modus operandi of attacking women and his ability to remain aroused when having nonconsensual, violent sex. Dr. Sidhu diagnosed defendant with antisocial personality disorder because of his lengthy criminal history, predatory mindset with women, lack of remorse, and complete disregard for others. Lastly, defendant's alcohol use disorder diagnosis was based on the negative impact alcohol use had on defendant's life. Dr. Sidhu concluded by opining that these three disorders predisposed defendant to the commission of criminal sexual acts.

2. Dr. Sidhu's Report

Defendant stipulated to the admission of Dr. Sidhu's report, which was considerably more detailed than Dr. Sidhu's testimony. The report explains that, because defendant refused to be evaluated, its contents and analysis were based on the dozens of documents listed at the beginning of his report, including conviction documents, DSH treatment plans, and past SVPA evaluations.

[4] Pruno is an alcoholic beverage made by mashing fruit with sugar or starches and warm water and letting it ferment. It is also known as "prison wine."

a. Criminal History

Dr. Sidhu's report details defendant's criminal history in two sections: one section discussing his sexual crimes and another section providing a broad overview of defendant's complete criminal history. The section discussing defendant's sexual crimes includes a detailed synopsis of his three SVPA-qualifying crimes and two other sexually violent crimes. One of the two other crimes Dr. Sidhu described was a 1976 attempted sexual assault, during which defendant picked up a hitchhiker, took her to a large condominium parking garage, and tried to force her to orally copulate him before she escaped. The other non-SVPA-qualifying sexual crime recounted the Brenda R. rape, during which defendant "drove up to her and had her get into his car by simulating a firearm . . . [then] forced her to orally copulate him, sodomized her, and then robbed her."

In addition to these sexual offenses, Dr. Sidhu's report summarizes defendant's every arrest and conviction, from juvenile offenses—including stealing and possessing marijuana and firearm offenses—to his SVPA-qualifying crimes. In the course of describing defendant's SVPA-qualifying convictions, Dr. Sidhu's report includes multiple statements by defendant during prior psychological evaluations in which he denied raping or attempting to rape multiple victims.

b. Personal History

Dr. Sidhu's report discusses defendant's personal history, including his family, relationship, and sexual history. According to the report, defendant's family was unstable, in part because his father was an alcoholic who was often absent. Defendant's relationship history is described as minimal. Defendant's sexual history includes defendant's denials of the SVPA-qualifying convictions against Geri B. and Cynthia M.

c. Substance Abuse

The report indicates that defendant has been using alcohol since he was 12 years old, occasionally until it made him sick. The report notes that defendant continues to have issues with alcohol while hospitalized. In addition, the report states that defendant began using cocaine at 15 and recounts defendant's statements during prior evaluations

that he was under the influence of alcohol and cocaine when he committed his sexual offenses.

d. Hospitalization

Dr. Sidhu's report then extensively details defendant's treatment and disciplinary history since he was first hospitalized as an SVP in 1997. It explains that, for the last few years, defendant consistently declined to participate in any Sex Offender Treatment Program (SOTP) but occasionally participated in substance abuse treatment programs. It also includes one doctor's comment noting that defendant brewed, sold, and drank pruno.

e. Diagnosis

The final section provides a detailed diagnostic profile, including Dr. Sidhu's diagnoses and analysis showing defendant is highly likely to reoffend. Dr. Sidhu's report explained that he diagnosed defendant with other specified paraphilic disorder (non-consenting) due to his numerous sexual offenses during which he maintained an erection and ejaculated while victims were resisting. The report explains that Dr. Sidhu's diagnosis of antisocial personality disorder is based on defendant's criminal behavior since the age of 12; his reliance on prostitutes for money; and his pattern of irritability, aggressiveness, and reckless disregard. Finally, the report explains that the alcohol use disorder diagnosis stemmed from defendant's repeated alcohol use from early adolescence continuing through hospitalization.

In his report, Dr. Sidhu opines that defendant's disorders impair defendant's volitional capacity and prevent him from being deterred by punishment. The report concludes by analyzing various factors, including appellant's criminal and treatment histories, and determining that defendant had a moderate-high risk of re-offending.

3. Dr. Karlson's Testimony

Dr. Karlsson testified after Dr. Sidhu. To form his opinions, Dr. Karlsson reviewed criminal records, prior DSH evaluations, and probation reports.

a. Criminal History

When analyzing defendant's criminal history to determine defendant's risk for reoffending, Dr. Karlsson discussed SVPA-qualifying and non-SVPA-qualifying

convictions, including some that were sexual in nature. He explained that defendant's criminal history started at the age of 12 and began including sexual components two years later. He committed his first crime with a sexual component at 14 when he grabbed a woman's crotch and breasts as he robbed her. While still 14, defendant also pointed a starter pistol at his former girlfriend and told her, "let's fuck."

Dr. Karlsson explained that defendant's sexual deviance continued into adulthood. Defendant twice unsuccessfully attempted to rape hitchhikers, once when he was 20 years old and again when he was 21 years old. Dr. Karlsson also relied on 1982 charges alleging defendant forced Brenda R. to orally copulate him before he sodomized and robbed her. Finally, he relied on defendant's parole violation for French kissing a nine-year-old girl in 1994. He described defendant's criminal history as showing a "chronic pattern of committing criminal offenses where he doesn't spend much time in the community before [being] arrested again for something."

b. Hospitalization

Dr. Karlsson also offered his view that defendant's behavior in custody elevated his recidivism risk. Although Dr. Karlsson did not provide much detail, he described defendant as exhibiting "all kinds of . . . problematic behaviors in the hospital," such as aggressive altercations and alcohol consumption.

c. Diagnosis

Dr. Karlsson diagnosed defendant with sexual sadism disorder, antisocial personality disorder, and alcohol use disorder. He based his sexual sadism disorder diagnosis on the negative state of arousal in which defendant placed his victims and defendant's own arousal from seeing his victims suffer. He also relied on defendant's pattern of continuing and escalating behavior, culminating in the rape of Cynthia M., during which he forcibly sodomized her before forcing her to orally copulate him at gun point. He concluded this rape showed that defendant derived pleasure from humiliating and terrifying his victims.

Dr. Karlsson similarly supported his diagnosis of antisocial personality disorder with defendant's lengthy criminal history from a young age, history of approximately 12

to 13 aggressive criminal acts, and imperviousness to punishment. He further relied on defendant's denials that he committed all but one of the sexual offenses, in particular defendant's denial of the Cynthia M. rape because it was recorded. Such lies, Dr. Karlsson explained, were significant to his diagnosis.

Finally, Dr. Karlsson explained that the alcohol use disorder diagnosis was based on defendant's prior admissions that he drank until he was sick, was intoxicated when he committed crimes, and repeatedly drank pruno in prison and DSH hospitals.

Based on these three disorders, as well as other psychological tests, Dr. Karlsson opined that defendant was at high risk for sexually reoffending.

4. Dr. Karlsson's Report

As he did with respect to Dr. Sidhu's report, defendant stipulated to the admission of Dr. Karlsson's report, which was more detailed than Dr. Karlsson's testimony.

a. Criminal History

Dr. Karlsson's report analyzes each of the SVPA-qualifying offenses in great detail, while observing that defendant had repeatedly denied sexually assaulting two of the three SVPA victims.

Next, the report summarizes defendant's overall criminal history, including his prior arrests for groping and pistol brandishing when was 14 years old, attempted sexual assault in 1975, attempted rape in 1976, assault with intent to commit other felony (oral copulation) in 1976, sexual assault of Brenda R. , and violations of his parole terms for alcohol and cocaine consumption. The report describes three non-SVPA-qualifying offenses in greater detail, including the victim whom defendant took to a parking garage but was able to escape, the rape of Brenda R., and the French kiss of a nine-year-old girl.

b. Personal History

Using information from prior evaluations, Dr. Karlsson's report delves into defendant's background, beginning with his childhood influenced by his father's alcoholism and his parents' separation. It also discusses defendant's adult history, touching upon his limited employment and relationship history. The report also contains excerpts of defendant's statements to past evaluators acknowledging that he was

immature and a womanizer when he committed the SVPA-qualifying offenses but now sees things differently.

c. Substance Abuse

Dr. Karlsson's report describes defendant's extensive substance abuse history, which started when defendant began drinking alcohol at around 12 or 13 years old. It further describes defendant's ongoing problems with consuming alcohol while hospitalized. Similarly, the report documents that defendant first used cocaine when he was around 15 years old and that he last used cocaine in 1997 when he violated his parole. It also notes that defendant admitted being under the influence of alcohol and cocaine during several offenses.

d. Hospitalization

In addition, Dr. Karlsson's report summarizes defendant's hospital records, including prior evaluations and disciplinary records. The report contains some remorseful statements but also includes defendant's admissions that he had prostituted women, denials that he had raped women, and descriptions of numerous altercations and violations while hospitalized.

e. Diagnosis

Based on this history, Dr. Karlsson diagnoses defendant with sexual sadism disorder, explaining that defendant appears to be "sexually aroused to [sic] and has engaged in behavior that involved causing suffering and humiliation to nonconsenting sexual partners." Dr. Karlsson then explains how the rapes of Cynthia M. and Brenda R. are examples of defendant's sexual sadism disorder. Similarly, Dr. Karlsson explains that defendant's early recidivism, repeated re-offenses, and denials or excuses for his criminal conduct call into question the authenticity of any remorse. Turning to defendant's relationship with controlled substances, Dr. Karlsson concludes that defendant has moderate alcohol use disorder based on his alcohol consumption to the point of illness, reported intoxication during offenses, and pruno consumption while hospitalized. However, the report explains that insufficient information exists to diagnose defendant with other substance abuse disorders.

Finally, Dr. Karlsson's report concludes by finding that defendant is at high risk for reoffending.

D. Other Exhibits

Along with the two expert reports, the defense stipulated to the admission of several certified court documents, a criminal history report, and a recent DSH case history report.

The certified court documents primarily concern the three SVPA-qualifying crimes. With respect to defendant's conviction for forcible oral copulation of Jean H., the prosecution admitted an information charging defendant with that crime, a minute order showing defendant had pleaded guilty to forcible oral copulation, and a minute order stating defendant (who was over 18 but under 21 at the time) was committed to the custody of the California Youth Authority for that crime. To prove defendant's conviction for raping Geri B., the prosecution admitted an order holding defendant to answer for crimes listed in the attached first amended complaint against Geri B. and Brenda R.; an information charging defendant with various crimes against Geri B. and Brenda R. and alleging three prior felony convictions for grand theft, assault with intent to commit oral copulation, and battery with serious bodily injury; an abstract of judgment showing defendant had pleaded guilty to raping Geri B.; and a minute order showing defendant had pleaded guilty to one count of rape in exchange for dismissal of the remaining counts. The charges concerning Brenda R. were not redacted from the order holding defendant to answer nor from the information charging him with raping Geri B. and Brenda R. As proof of defendant's convictions relating to his rape of Cynthia M., the prosecution introduced the information charging defendant with multiple counts of rape and assault, as well as an abstract of judgment showing defendant had pleaded guilty to forcibly raping, sodomizing, falsely imprisoning, assaulting with a firearm, and forcing Cynthia M. to orally copulate him.

In addition to certified court documents of the SVPA-qualifying crimes, the prosecution also admitted an abstract of judgment showing a jury had convicted

defendant of assault with intent to commit oral copulation of another victim in 1976 to impeach him when he denied committing the crime.

To establish defendant's lengthy criminal history, the prosecution admitted an Alameda County Criminal Events Sheet documenting defendant's numerous convictions and arrests; the defense stipulated to the admission of this exhibit as well. The foundation for that exhibit was laid by Alameda County Informational Technology Manager Nick Dewan, who managed the Alameda County Consolidated Records Information Management System, commonly referred to as CRIMS. Dewan explained that CRIMS had generated the Alameda County Criminal Events Sheet for defendant.

The only other exhibit admitted was a California DSH case history for defendant that was finalized in November 2015; again, the defense stipulated to the admission of this exhibit. Defendant's case history contains basic background information, diagnoses, and substance abuse history along with annual summaries of his conduct while hospitalized, including violations of hospital policy such as the manufacturing of pruno. Some details, like defendant's work as a janitor for DSH or participation in basketball, characterize defendant as an ordinary patient. But other portions paint defendant in a darker light, such as the comment that defendant has committed six sexual offenses with five convictions and the description of defendant as "hav[ing] a predatory pattern of picking women he does not know and sexually assaulting them . . . [and] a history using violence in his sexual offending." It further explains that defendant was "currently hospitalized and detained as a Sexually Violent Predator."

E. Defendant's Testimony

Defendant testified on his own behalf. He stated that he has been hospitalized as an SVP since 1997. He was first hospitalized at Atascadero Hospital, where he completed the first phase of a SOTP and some courses for the second phase of the SOTP, including a course on substance abuse. However, on advice of counsel, he refused to complete phase two of the SOTP because it required him to sign an admission that he is an SVP.

Defendant conceded that he has not participated in newer programs offered at Coalinga State Hospital, where he was last hospitalized. He explained that the newer SOTP focuses on offenders who were not under the influence of drugs and alcohol when they offended and that he could not relate to these offenders because he committed offenses while under the influence. Instead, he has taken substance abuse classes to deal with his past cocaine and alcohol use. When asked about recent alcohol use while hospitalized, defendant admitted to drinking but not manufacturing pruno.

Defendant also admitted knowing the court had ordered him to submit to psychological evaluations for this case and that he still declined to meet with Dr. Sidhu and Dr. Karlsson. He explained that he believed he could legally refuse. But he acknowledged that it would have been helpful to have sincere conversations about his treatment with Dr. Sidhu and Dr. Karlsson.

Defendant admitted that he forced Jean H. to orally copulate him, but repeatedly denied sexually assaulting Geri B., Cynthia M., Brenda R., and other victims. For example, he conceded that he drove Geri B. to a hotel and had sex with her, but claimed it was voluntary. Defendant similarly agreed that he had picked up Brenda R. and that she orally copulated him, but he claimed it was consensual. Finally, he conceded that he was smoking crack and moved a gun from one place to another while having sex with Cynthia M. but maintained the sex was consensual.

II. DISCUSSION

A. *Sanchez* Error

Defendant claims that the trial court impermissibly allowed Dr. Sidhu and Dr. Karlsson to testify about case-specific hearsay. "[A] trial court's decision to admit or exclude a hearsay statement . . . will not be disturbed on appeal absent a showing of abuse of discretion." (*People v. Jones* (2013) 57 Cal.4th 899, 956.)[5]

[5] Defendant's claims concern state evidentiary law, not alleged violations of the Confrontation Clause.

Prevailing law at the time of defendant's trial permitted an expert to testify about case-specific hearsay evidence relating to the circumstances of the case at hand, if the expert used it to reach his or her opinion. (E.g., *People v. Montiel* (1993) 5 Cal.4th 877, 919.) That law changed two months after defendant's trial with *People v. Sanchez, supra,* 63 Cal.4th 665 (*Sanchez*), which now bars such testimony unless independent evidence of the matter discussed has been admitted or an appropriate hearsay exception applies. (*Id.* at pp. 670–671, 686.)

At defendant's trial, the testimony of the prosecution experts was peppered with hearsay-based, case-specific references concerning defendant's non-SVPA-qualifying crimes, his substance abuse history, and his conduct during confinement. For example, both experts discussed details of defendant's juvenile offenses, his alleged rape of Brenda R., and his disciplinary issues involving pruno while hospitalized. After *Sanchez*, such case-specific testimony would be improper in the absence of independent evidence in the record regarding those incidents.

As a threshold matter, the Attorney General contends that defendant forfeited the issue by failing to object to the experts' relating of case-specific hearsay. We previously rejected a similar argument in *People v. Jeffrey G.* (2017) 13 Cal.App.5th 501, 507 (*Jeffrey G.*). There we explained, "Under the law prevailing at the time of defendant's hearing, an expert was permitted to testify relatively freely about the content of hearsay evidence relating to the circumstances at hand, if the evidence constituted a basis for his or her opinion." (*Id.* at p. 506.) Given the liberal admissibility of such testimony, any hearsay objection most likely would have been overruled. (*Ibid.*) Because reviewing courts " 'have traditionally excused parties for failing to raise an issue at trial where an objection would have been futile,' " (*id.* at p. 507) and because parties are generally not expected to anticipate rulings that significantly change prevailing law, defendant has not forfeited his claim despite his failure to object below.

We then turn to whether there was independent evidence of the case-specific facts as to which the experts testified. (*Sanchez, supra,* 63 Cal.4th at pp. 676–677.) As mentioned above, the defense stipulated to the admission of both expert reports even

though both reports constituted hearsay, contained additional levels of hearsay, and included greater detail than the testimony of either expert. The difference between the experts' testimony and their reports is best illustrated when analyzing the level of detail about various non-SVPA-qualifying sexual assaults: Rather than briefly mentioning each sexual victim (as the experts did while testifying), the reports provided extended descriptions that make clear defendant had a modus operandi of forcibly assaulting women, often after offering them a ride. Similarly, the expert reports also discussed defendant's issues with substance abuse in much greater detail, describing defendant's prior use of cocaine and alcohol beyond what either expert discussed on the stand. For example, Dr. Karlsson's report describes that defendant began drinking around age 12 or 13, that defendant often drank daily, and that he frequently got sick or had hangovers. Dr. Karlsson's report also described how defendant initially snorted cocaine when he first used it in 1970 and began to smoke crack cocaine around 1980 or 1981. In contrast, Dr. Karlsson only briefly mentioned defendant's alcohol use and did not discuss his drug use while testifying. Accordingly, the experts' testimony did not constitute *Sanchez* error because of defendant's stipulation to the admission of exhibits containing the same or substantially greater information. (See, e.g., *Jeffrey G.*, *supra*, 13 Cal.App.5th at p. 506 [if other admitted evidence supported an expert's case-specific testimony, the expert's testimony was not objectionable under *Sanchez*]; *People v. Burroughs* (2016) 6 Cal.App.5th 378, 407 (*Burroughs*) [under *Sanchez*, expert testimony regarding case-specific facts was error "unless the documentary evidence the experts relied upon was independently admissible"].)[6]

[6] We recognize that *People v. Vega-Robles* (2017) 9 Cal.App.5th 382, 413 concluded that *Sanchez* error occurs where an expert testifies as to case-specific facts of which the expert does not have personal knowledge, "even if specific facts are independently proven by other evidence." That reasoning, however, appears difficult to square with *Sanchez*'s statement that an expert may not relate case-specific facts contained in hearsay statements "unless they are *independently proven by competent evidence* or are covered by a hearsay exception." (*Sanchez, supra*, 63 Cal.4th at p. 686 [italics added].) In any event, *Vega-Robles* and cases such as *Jeffrey G.* and *Burroughs* are "only superficially in tension with one another" in this case, because any purported

But even if defendant could claim error, he cannot show prejudice under the applicable standard of *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*) for errors of state law. (*People v. Flint*, *supra*, 22 Cal.App.5th at pp. 1003–1004 (*Flint*); *People v. Roa* (2017) 11 Cal.App.5th 428, 455.) Under the *Watson* standard, reversal for errors of state law is required only if "it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*Watson*, at p. 836.) The *Watson* standard applies "even where the expert's testimony included multiple statements that were inadmissible under *Sanchez*." (*Flint*, at p. 1004.)

Here, even excluding the case-specific hearsay related by the experts in their testimony, the jury was still presented with overwhelming evidence that defendant is an SVP. The reading of Jean H.'s, Geri B.'s, and Cynthia M.'s preliminary hearing testimony shows the escalating violence defendant used during his sexual assaults in graphic detail. Coupled with conviction records, this evidence also proves defendant was convicted of three SVPA-qualifying crimes.

There was also ample admissible evidence establishing that defendant suffered from mental disorders that made it likely he would reoffend. Both experts concluded that defendant had antisocial personality disorder and alcohol use disorder, placing him at high risk for re-offending. Although the experts differed on whether defendant suffered from paraphilic disorder or sexual sadism disorder, both agreed that defendant has a mental disorder causing him to derive sexual pleasure from nonconsensual, violent sex such as that described in the preliminary hearing transcripts. Any jury was therefore highly likely to find defendant was an SVP, irrespective of whether the case-specific hearsay had been excluded.

Moreover, defendant's own testimony supports the experts' opinions that he presents a high risk of sexually assaulting women if released. For example, during his testimony, defendant repeatedly denied assaulting Geri B. and Cynthia M.—even though he was convicted of both crimes and his horrific sexual assault of Cynthia M. was

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Sanchez error was harmless in light of the admitted evidence, as explained below. (*People v. Flint* (2018) 22 Cal.App.5th 983, 1000.)

partially videotaped. Those denials showed defendant failed to accept responsibility for his crimes and was incapable of remorse, making him more likely to reoffend. His inability to accept responsibility is also evidenced by defendant's failure to participate in treatment for sex offenders, further raising concerns about defendant's self-awareness and ability to refrain from sexually assaulting women in the future. Moreover, defendant testified that he continued to consume alcohol while hospitalized and that he was often under the influence of alcohol when he committed the SVPA-qualifying offenses. It is therefore difficult to see how a jury would conclude defendant was not an SVP given his SVPA-qualifying convictions, the experts' admissible testimonies as to their diagnoses, and his own testimony.

In sum, we conclude that there was not *Sanchez* error in light of defendant's stipulation to the admission of exhibits that contained even more detailed case-specific hearsay than the experts' testimony. But even if the experts' testimony did violate *Sanchez*, any such error was harmless under *Watson*, as the omission of the case-specific hearsay probably would not have resulted in a more favorable verdict for defendant.

B. Admission of Documents

Defendant challenges the admission of almost every exhibit admitted,[7] contending they either should have been redacted or excluded because they contained hearsay. We again review for abuse of discretion. (*People v. Jones*, *supra*, 57 Cal.4th at p. 956.)

We first address defendant's objections to the certified court documents concerning defendant's SVPA-qualifying convictions, specifically: Exhibit 1, the information charging defendant with crimes against Jean H.; Exhibit 4, the order holding defendant to answer for the crimes against Geri B. and Brenda R.; Exhibit 5, an information charging defendant with crimes against Geri B. and Brenda R.; Exhibit 7, an information charging defendant with crimes against Cynthia M.; Exhibit 8, an abstract of judgment for crimes committed against Cynthia M.; and Exhibit 14, court minute order

[7] Defendant also objects to Exhibit 11, which was not admitted, and we will therefore not address.

and plea waiver for crimes against Geri B. We conclude that these exhibits were in large part admissible under the SVPA's hearsay exception for documentary evidence containing details of the underlying commission of SVPA-qualifying offenses. (§ 6600, subd. (a)(3).) Any information concerning non-SVPA charges—such as the use of a firearm against Cynthia M. to prevent her from leaving—was repetitive of the information provided through the preliminary hearing transcripts read into the record and therefore harmless.[8]

Similarly, defendant claims that Exhibit 20, the Alameda County Criminal Events Sheet, and Exhibit 22, certified documents relating to a felony conviction defendant testified he did not commit, contain inadmissible, case-specific hearsay. We disagree. Exhibit 20 was properly admitted under the hearsay exception for public records. (Evid. Code, § 1280; *People v. Morris* (2008) 166 Cal.App.4th 363, 367.) Exhibit 22 is not only admissible as a public record (Evid. Code, § 1280), it was also admissible to impeach defendant, who denied that conviction on the stand. (Evid. Code, § 788.)

Defendant further contends that Exhibit 10, a California DSH case history report, and Exhibits 9 and 16, respectively Dr. Sidhu's and Dr. Karlsson's expert reports, also contain inadmissible case-specific hearsay and should not have been admitted. These exhibits include "hearsay that was not shown to fall within a hearsay exception." (*Burroughs*, *supra*, 6 Cal.App.5th at p. 411.) However, the Attorney General is correct that defendant may not challenge the admission of these exhibits because trial counsel stipulated to admission of those documents at the end of his trial. While the law then permitted expert witnesses to relate case-specific facts that served as the basis for the experts' opinions (*Jeffrey G.*, *supra*, 13 Cal.App.5th at pp. 506, 508), it did not create similar hearsay exceptions for exhibits admitted as substantive evidence. (*Burroughs*, at

[8] The only exception related to the documents mentioning charges against Brenda R. As discussed, defendant stipulated to the admission of expert reports that discussed his sexual assault of Brenda R. in detail. Defendant therefore cannot demonstrate any prejudice by the inclusion of information relating to Brenda R. in the certified court documents.

p. 409.) Such hearsay was inadmissible before and remains inadmissible after *Sanchez*. (*Id.* at pp. 408–409.) Accordingly, when defendant stipulated rather than objected to admission of the expert reports and the California DSH case history, he forfeited his ability to appeal the admission of those exhibits. (*Burroughs*, at p. 408; *People v. Mitcham* (1992) 1 Cal.4th 1027, 1071.)[9]

Defendant alternatively appears to argue that Exhibits 4, 5, 7, 8, 9, 14, 16, 20, and 22 should have been redacted to exclude inadmissible hearsay.[10] But he cannot assert this claim for the first time on appeal. "[I]t is settled law that where evidence is in part admissible, and in part inadmissible, 'the objectionable portion cannot be reached by a general objection to the entire [evidence], but the inadmissible portion must be specified.' " (*People v. Harris* (1978) 85 Cal.App.3d 954, 957.) Defendant's contention on appeal that these exhibits should have been redacted therefore comes too late.

In any event, even if defendant could show that these exhibits should have been excluded or redacted, his claim would still fail because he cannot show that either exclusion or redaction of these exhibits would have made it "reasonably probable" that he would have received a more favorable result. (*Watson*, *supra*, 46 Cal.2d at p. 836.) Indeed, for the same reasons we conclude that the experts' testimony as to case-specific hearsay did not prejudice defendant, we conclude defendant cannot show prejudice here. The strongest evidence against defendant was already properly admitted when excerpts of the preliminary hearing transcripts for the SVPA-qualifying offenses were read into the record. The experts' diagnoses were also both admissible and convincing, especially

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[9] Defendant contends his trial counsel may have stipulated to admission of the exhibits because the experts' testimony on the same topics was admissible under pre-*Sanchez* case law. Not only is this theory wholly speculative, it is unsupported in the record. The record establishes that the expert reports were not, as counsel seems to suggest, merely coextensive with their testimony; as explained above, the reports were far more detailed and extensive. The state of pre-*Sanchez* case law therefore neither explains nor undermines defendant's stipulation to admission of the expert reports.

[10] Defendant does not contend that Exhibit 10, the California DSH case history report, should have been redacted because it contained exclusively case-specific hearsay and was entirely inadmissible.

when viewed alongside defendant's denials that he committed most of the sexual assault crimes of which he had been convicted, as well as his admissions that he declined to participate in sex offender treatment and continued to consume alcohol while hospitalized—notwithstanding his recognition that he was under the influence during his sexual assaults. As it is therefore not reasonably probable that defendant would have received a more favorable result if any of these exhibits had been redacted or excluded, defendant's claims fail.

C. Ineffective Assistance of Counsel

Defendant claims that he received ineffective assistance of counsel because his counsel failed to object to the admission of exhibits containing hearsay.

The federal and state Constitutions guarantee criminal defendants the right to adequate representation by counsel. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15; *People v. Vines* (2011) 51 Cal.4th 830, 875.) A similar right is extended to individuals whom the State of California is seeking to commit under the SVPA. (§ 6602.) To establish ineffective assistance of counsel, a defendant must show that trial counsel's representation failed to meet an objective standard of professional reasonableness and that he was prejudiced by that deficient representation. To demonstrate prejudice, the defendant must show that absent the deficient representation, there is a reasonable probability the result would have been more favorable. (*Strickland v. Washington* (1984) 466 U.S. 668, 687–688 (*Strickland*); *People v. Frye* (1998) 18 Cal.4th 894, 979 (*Frye*).) A conviction may not be reversed on appeal for ineffective assistance of counsel unless the record shows there was no rational tactical purpose for counsel's act or omission. (*Frye*, at p. 979.)

Defendant contends that his trial counsel's failure to object to exhibits containing case-specific hearsay constituted ineffective assistance. In determining whether counsel failed to meet an objective standard of professional reasonableness for failing to object, the issue is not whether an objection would have been successful but whether counsel might have had a tactical reason for not asserting one. "An attorney may choose not to object for many reasons, and the failure to object rarely establishes ineffectiveness of

counsel." (*People v. Kelly* (1992) 1 Cal.4th 495, 540.) In this case, defendant's trial counsel may well have agreed to the admission of the expert reports because they contained some sympathetic information, such as defendant's prior treatment, work within the hospital, employment history, and difficult childhood. In addition, trial counsel could rationally believe that it would be better for the jury to know the details of non-SVPA-qualifying sexual assaults to understand that those assaults were not as horrific as the assault against Cynthia M.

But even if we concluded that defendant's trial counsel had no rational tactical purpose for failing to object to the admission of the exhibits, defendant still cannot meet the second *Strickland* prong because he fails to show a "demonstrable reality" that, even if an objection had been made and sustained, the result might have difference. (*Strickland*, *supra*, 466 U.S. at pp. 688, 694.) As previously discussed, defendant's lengthy history of sexual assaults—as described in the preliminary hearing transcripts beginning with his forced oral copulation of Jean H. and culminating with the horrendous and prolonged assault of Cynthia M. at gunpoint—coupled with defendant's concerning mental health diagnoses and his own denials on the stand make it highly improbable that any jury would have reached a different result. Having failed to meet either *Strickland* prong, defendant's ineffective assistance of counsel claim must fail.

D. Fifth Amendment Right Against Self-Incrimination for Psychiatric Evaluations

Defendant contends the trial court improperly ordered him to interview with the state's mental health experts in violation of his Fifth Amendment rights and erroneously instructed the jury of his refusal to be interviewed. We reject defendant's arguments.

Relying on *Hudec v. Superior Court* (2015) 60 Cal.4th 815 (*Hudec*), defendant contends that he could not be compelled to undergo psychological evaluations because he has the same rights as a criminal defendant. Indeed, *Hudec* found that Penal Code section 1026.5—which applies to proceedings involving individuals found not guilty by reason of insanity—extended to individuals facing civil commitments the same rights enjoyed by criminal defendants, including the right to refuse to testify. (*Id.* at 826.) The

SVPA provides similar rights, though not as far-reaching. (§ 6603 [persons subject to SVPA proceedings have the right to a jury trial, counsel, appointment of experts, and access to relevant records].) But *Hudec* also recognized that these rights were statutorily, not constitutionally, derived. (*Id.* at 826.) Furthermore, *Hudec* is distinguishable because defendant, unlike Hudec, was not forced to testify during the prosecutor's case-in-chief. We therefore agree with the Attorney General that defendant's reliance on *Hudec* is misplaced.

Defendant further claims the court should not have informed the jury of his refusal to be evaluated after being ordered to speak with Dr. Sidhu and Dr. Karlsson. We again disagree. As the Fifth Amendment does not apply to defendant's psychological evaluation, the trial court did not err in commenting on defendant's refusal to submit to an evaluation. (Cf. *Asherman v. Meachum* (1992) 957 F.2d 978, 982–983 [finding no Fifth Amendment violation where prison officials revoked a defendant's supervised home release for refusal to participate in psychological evaluations].)

Furthermore, an individual who takes the stand and testifies on his own behalf waives his Fifth Amendment privilege against self-incrimination at least to the extent of the scope of relevant cross-examination. (*Johnson v. United States* (1943) 318 U.S. 189, 195; *People v. Hopson* (2017) 3 Cal.5th 424, 463.) Without objection, defendant admitted on cross-examination that he refused to meet with Drs. Sidhu and Karlsson. But even if defendant had not testified, any error in allowing Dr. Sidhu or Dr. Karlsson to comment on defendant's refusal was rendered harmless beyond a reasonable doubt by defendant's stipulation to admission of the expert reports, both of which stated explicitly that he had refused to be interviewed.

Finally, we decline to extend *Hudec* to those being civilly committed under the SVPA to the point where it would produce absurd consequences. (*Hudec*, *supra,* 60 Cal.4th at pp. 828–829.) *Hudec* explained that, "[w]here a right applicable in criminal proceedings cannot logically be provided within the framework of [a not guilty by reason of insanity] commitment extension hearing, we might infer the Legislature could not have meant for [Penal Code] section 1026.5(b)(7) to encompass it." (*Hudec*, at p. 828.)

Extending this same logic to the SVPA, we conclude that recognizing a constitutional right that would prevent psychiatrists from assessing whether a person should be committed under the SVPA would make it difficult to evaluate anyone and is thus the epitome of an absurd consequence.

E. Fifth Amendment Right Against Self-Incrimination for Alcohol Use

Defendant contends the court should have permitted him to assert his Fifth Amendment privilege not to incriminate himself when the prosecutor asked him about the manufacture, possession, and consumption of pruno while hospitalized.

Defendant elected to take the stand in his defense in this civil case to commit him as an SVP. On direct examination, defendant claimed he had received treatment for his substance abuse issues. During cross-examination, defendant claimed his offenses were tied to his substance use, specifically cocaine and alcohol. Only after defendant admitted the connection between his substance abuse and his offenses did the prosecutor ask about defendant's consumption and manufacturing of pruno. While defendant admitted consuming pruno on multiple occasions, defendant repeatedly denied manufacturing pruno.

Defendant correctly notes that the privilege against self-incrimination may be invoked not only by a criminal defendant, but also by parties or witnesses in a civil action. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 886.) But his interpretation extends the right too far. By choosing to take the stand in the present matter, defendant voluntarily waived the privilege against self-incrimination for the entire scope of relevant cross-examination. (*Brown v. United States* (1957) 356 U.S. 148, 154–155.) That waiver included his ongoing consumption of alcohol because he testified about substance abuse treatment on direct examination. As the Supreme Court has explained, defendant " 'has no right to set forth to the jury all the facts which tend in his favor without laying himself open to a cross-examination upon those facts.' " (*Id.* at p. 155.) Defendant therefore cannot tout his completion of substance abuse programs on direct examination without being subject to cross-examination about his ongoing substance abuse.

Defendant nonetheless insists he should not have been compelled to answer the prosecutor's questions about pruno because defendant's consumption of pruno might constitute "criminal behavior."[11] We disagree. The Fifth Amendment's protections extend only to criminal activity, not civil, administrative, or other non-criminal penalties. (*Minnesota v. Murphy* (1984) 465 U.S. 420, 435, fn. 7 [Fifth Amendment did not apply to probation revocation because it was not a criminal proceeding].) As noted by the Attorney General, consuming pruno while a patient at a state hospital is not a crime. And again, defendant waived his Fifth Amendment privilege to the extent of the scope of relevant cross-examination, which included his non-criminal alcohol use. (*People v. Hopson*, *supra*, 3 Cal.5th at p. 463.) Compelling defendant to answer questions about his ongoing use of alcohol did not offend the Constitution (*People v. Garcia* (2017) 2 Cal.5th 792, 798), and we therefore reject his claim that his Fifth Amendment rights were violated.

Shortly before oral argument, defendant's counsel submitted a letter citing provisions of the Penal Code and Business and Professions Code that criminalize the manufacture of alcoholic beverages in certain circumstances. Even assuming this argument was not waived by failure to cite these authorities earlier and even assuming there was a Fifth Amendment violation by requiring defendant to answer questions regarding his manufacturing of pruno, there is no merit to this belated contention. Given the state of the evidence (including admitted exhibits discussing defendant's manufacturing of pruno and his testimony admitting his ongoing alcohol use while hospitalized), we have little trouble finding that the error, if any, was harmless beyond a reasonable doubt. (*People v. Waldie* (2009) 173 Cal.App.4th 358, 366–367.)

F. Cumulative Prejudice

Defendant contends the cumulative effect of the errors in his case denied him a fair trial. (*People v. Hill* (1998) 17 Cal.4th 800, 844–845 [a series of trial errors, though

[11] Defendant's reply brief claims Penal Code section 172 makes it illegal to sell alcoholic beverages within a half mile of land belonging to the state of California. As defendant only admitted to consuming pruno, we will not address this argument.

independently harmless, may rise to the level of prejudicial error].) As we have either rejected the merits of defendant's claims of error or have found any asserted errors to be nonprejudicial, we reject his contention that the judgment must be reversed due to the cumulative effect of alleged errors. (*People v. Cole* (2004) 33 Cal.4th 1158, 1235–1236.)

III. DISPOSITION

The judgment is affirmed.

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BROWN, J.

WE CONCUR:

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POLLAK, P. J.

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STREETER, J.